IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIE A. BURRELL, JR.,	:	CIVIL ACTION
	:	NO. 00-4697
Plaintiff,	:	
	:	
v.	:	
	:	
UNITED HEALTHCARE INSURANCE CO. ET AL.,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

AND NOW, this **27th** day of **July**, **2001**, it is hereby **ORDERED** that defendants' motion for partial summary judgment (doc. no. 43) is **GRANTED**. The court's order as to plaintiff's claim for bad faith is based on the following reasoning:[1]

Plaintiff contends that defendant United HealthCare Insurance Company exercised bad faith in denying his claim for coverage of his in-patient stay in the Post Traumatic Stress Disorder Unit (the "PTSD Unit") of the Coatesville Veterans' Administration Medical Center's (the "Coatesville VAMC"). Pennsylvania law provides a cause of action against insurance companies for bad faith. See 42 Pa. Cons. Stat. § 8371. Bad faith is defined as:

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1. Defendant's motion also seeks summary judgment as to plaintiff's claim for breach of fiduciary duty. Because plaintiff raised no opposition to defendant's motion as to that claim and submitted a draft order to that effect, see doc. no. 55, the court will grant defendant's motion as to plaintiff's claim for breach of fiduciary duty without further discussion.

> any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e. good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

Terletsky v. Prudential Prop. and Cas. Ins. Co., 437 Pa. Super. 108, 649 A.2d 680, 688 (Pa. Super. Ct. 1994) (quoting Black's Law Dictionary 139 (6th ed. 1990)).

In order to recover under a claim of bad faith, a plaintiff must show by clear and convincing evidence that: (1) the insurer did not have a reasonable basis for denying benefits under the policy; and (2) the insurer did not know or recklessly disregarded the fact that it lacked a reasonable basis for denying the claim.[2] See id. (citing D'Ambrosio v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 494 Pa. 501, 507, 431 A.2d 966, 970 (Pa. 1981)). Clear and convincing evidence is evidence that is "so clear, direct, weighty and convincing as to enable the [fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. . . ." United States Fire Ins. Co. v. Royal Ins. Co., 759 F.2d 306, 309 (3d Cir. 1985) (quoting In re Estate of Fickert, 461 Pa. 653, 658, 337 A.2d 592,

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2. In order to prove a claim of bad faith, a plaintiff must satisfy both prongs of the two-prong test. See Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233 (3d Cir. 1997) ("[In Terletsky], the Pennsylvania Superior Court applied a two-part test, both elements of which must be supported with clear and convincing evidence . . . .").

594 (1975)); see also Polselli v. Nationwide Mut. Fire Ins. Co, 23 F.3d 747 (3rd Cir. 1994).

In this case, defendant cited two primary reasons for denying plaintiff's claim. First, defendant contends that the PTSD Unit of the Coatesville VAMC was not an eligible facility under the terms of plaintiff's policy because the PTSD Unit did not have 24 hour coverage by registered nurses. See Pl.'s Ex. K. Defendant points to a letter it received from Matthew Alfonso, the Compliance Officer at the VAMC, which indicates that the PTSD Unit does not have 24 hour nursing coverage. See Pl.'s Ex. Q.

It is undisputed that certain units within the VAMC other than the PTSD Unit had 24 hour nursing coverage. Plaintiff points out that the Certificate of Insurance refers to "institutions," rather than "units of institutions." According to plaintiff, because certain units within the VAMC have 24 hour nursing coverage, the PTSD Unit, as a unit of the VAMC, is an eligible facility. The Certificate of Insurance requires, however, that the institution at issue "meets fully" all of the enumerated requirements, including 24 hour nursing coverage. According to defendant, the fact that the PTSD Unit itself did not have 24 hour nursing coverage dictated the conclusion that the VAMC did not "meet fully" the eligibility requirements in plaintiff's case.

In addition, defendant argues that its interpretation

of the Certificate of Insurance is supported by the language of the Certificate which provides that while nursing coverage must be provided 24 hours a day, physicians need only be "available at all times." Pl.'s Ex. C. The Certificate thus sets different requirements for physicians and nurses. If plaintiff's interpretation of the Certificate that having a nurse available from another unit within the same institution 24 hours a day is correct, defendant contends, the Certificate would not have set forth different requirements for physicians and nurses. On the strength of this reasoning, the court finds that defendant's interpretation of the Certificate is reasonable, and thus provides a reasonable basis for denying plaintiff's claim on the grounds that the PTSD Unit of the Coatesville VAMC was not an eligible facility under the Certificate of Insurance.

Defendant's second ground for denying plaintiff's claim was that plaintiff's stay was not medically necessary. A number of facts support defendant's contention. When plaintiff was admitted to the PTSD Unit, he was assessed as a low risk for suicide, homicide, and assaultiveness, and did not exhibit any hallucinations. Throughout plaintiff's stay, he had no significant contact with a physician.[3] His treatment plan was

3. Although plaintiff testified that he did meet with Dr. Glasner, the attending psychiatrist, a number of times, he did not remember the subject matter of those meetings. See Burrell Dep. at 220-21.

created by a team of persons that did not include any physicians. Plaintiff's "Progress Notes" from his stay at the facility are devoid of any entries made by a treating physician, and none of the therapy sessions or treatment groups in which plaintiff participated were attended by a physician. Plaintiff was permitted to administer his own medication according to a "Self-Medication Contract" he signed upon his admission to the PTSD Unit. The PTSD Unit did not provide any treatment for its patients on weekends, and permitted plaintiff to leave the facility on day passes on several occasions. On weekdays, all mandatory treatment sessions concluded by 1:30 p.m., with the exception of weekly drug treatment and nursing education meetings. Finally, the VAMC's compliance officer stated that there was no appreciable difference between the non-acute residential treatment that the PTSD Unit provided and outpatient care. See Alfonso Dep. at 93. Therefore, it was reasonable for defendant to conclude that the type of treatment afforded plaintiff at the VAMC could been provided to plaintiff in a non-hospital setting.

All of the above considerations call into doubt the medical necessity of plaintiff's stay at the PTSD Unit. Although plaintiff produced a letter written by Dr. Saul Gasner, the PTSD Unit's attending psychiatrist, stating that plaintiff's stay was in fact medically necessary, Dr. Glasner merely states that

"[a]fter review of the records it is my opinion that [plaintiff's] episode of hospital care [in the PTSD Unit] was medically necessary and appropriate." This statement is conclusory and unsupported by any discussion of the details of plaintiff's condition upon admission or treatment at the VAMC. For this reason, it was not unreasonable for defendant not to give controlling weight to Dr. Glasner's opinion. Accordingly, the court finds that defendant had a reasonable basis for concluding that plaintiff's stay at the VAMC was not medically necessary.[4]

Even assuming that plaintiff could show that defendant lacked a reasonable basis for denying plaintiff's claim, plaintiff does not point to evidence such that a reasonable jury could find by clear and convincing evidence that defendant knew or recklessly disregarded its absence of a reasonable basis for denying plaintiff's claim. See Hyde Athletic, 969 F. Supp. at 309 ("Plaintiffs have presented the court with no evidence with which a jury could reasonably conclude that any of the Defendant insurers acted with recklessness or ill will in dealing with Plaintiffs' claims. Therefore, the court grants summary judgment for the Defendant insurers. . . ."). The gravamen of plaintiff's

4. The court's holding that defendant had a reasonable basis for denying plaintiff's claim does not dictate that defendant's interpretation was correct, or that plaintiff will not be given an opportunity to prove at trial that he was entitled to coverage during his stay at the VAMC under his policy.

complaint is that he was treated differently than other similarly situated policy holders. Defendant paid the claims of three of its policy holders who submitted claims for their stays at the Coatesville VAMC PTSD Unit. See Pl.'s Ex. GG, HH, II. Two of the claims were paid after first being denied on the grounds that the policy holders' respective stays at the PTSD Unit were not medically necessary. The third claim was paid without any investigation into the claim by defendant.

"The bad faith statute addresses only whether insurers acted recklessly or with ill will in a particular case, not whether its business practices are reasonable in general." Hyde Athletic Indus., Inc. v. Continental Cas. Co., 969 F. Supp. 289, 307 (E.D. Pa. 1997). The mere fact that defendant did not raise the question of facility eligibility with respect to the other claimants, and eventually paid all three of their claims, is not clear and convincing evidence of reckless conduct. Plaintiff does not point to any evidence suggesting that defendant had reason to believe that the facility ineligibility rationale it gave initially for denying plaintiff's claim was an unreasonable interpretation of the insurance contract, or that defendant acted with any ill will toward plaintiff in particular out of some personal animus, or that denial of the claim was the result of unlawful discrimination.

Defendant's business decisions to pay the two claims

that it had initially denied on the basis of a lack of medical necessity, rather than incurring the risks of litigation, simply do not rise to the level of bad faith: "[w]hat constitutes a reasonable set of business practices for the investigation and evaluation of claims is a question properly left to the Pennsylvania Insurance Commissioner, not a judge and jury." Id. Defendant's failure to even investigate the third claim and instead simply pay the claim reflects its prerogative to do so. The fact that defendant chose to raise a reasonable defense in response to plaintiff's claim in this case, rather than enter into a quick settlement as it did in settling the other claims, does not give rise to bad faith on the part of defendant.

The other allegations of bad faith against defendant similarly fail to rise to the level of reckless conduct. In plaintiff's view, defendant's subsequent claim that plaintiff's stay at the PTSD Unit was not medically necessary is itself bad faith, because defendant had initially relied solely on its facility ineligibility rationale in denying plaintiff's claim. The mere fact, however, that defendant did not set forth all of the potential grounds for denying a claim in the first instance does not constitute bad faith. Cf. Williams v. Hartford Cas. Ins. Co., 83 F. Supp.2d 567, 574 (E.D. Pa. 2000) ("[I]f there is a reasonable basis for delaying resolution of a claim, even if it is clear that the insurer did not rely on that reason, there

cannot, as a matter of law be bad faith."). Moreover, plaintiff does not offer any evidence suggesting that defendant intentionally withheld stating the full medical necessity rationale to delay resolution of plaintiff's claim or to otherwise unfairly prejudice plaintiff's prosecution of his claim or that it intentionally attempted to disguise the real reason for denying the claim.

Plaintiff's claim that defendant failed to supplement his claim file to reflect evidence that did not support defendant's position also fails to establish bad faith. To the extent that defendant had any duty to update the claim file to reflect disagreement with defendant's position, there is no evidence that defendant's failure to note: (1) a Coatesville VAMC employee's disagreement with defendant's contention that the VAMC did not constitute a hospital; and (2) plaintiff's former counsel's representation that the PTSD Unit did have 24 hour a day nursing coverage, was other than, at best, mere negligence, rather than a conscious disregard for its lack of a reasonable basis for its position.[5]

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5. Plaintiff also points out that defendant neglected to supply to the state Department of Insurance for its inquiry into plaintiff's complaint a letter that plaintiff had provided to defendant from a physician's assistant, Helen Book, at the Coatesville VAMC. See Pl.'s Ex. T. In that letter, Book contends that the PTSD Unit does have 24 hour coverage by registered nurses, noting that during "off tours" coverage is provided by a registered nurse in charge assigned to the building. Defendant was aware of this fact, however, but took

Finally, plaintiff points to an internal email written by one of defendant's employees acknowledging that another PTSD Unit did have 24 hour nursing coverage and stating that "[a]t first [the existence of the 24 hour nursing coverage] was a concern to me but I explored other avenues and found that the certificate language does not support this type of facility either." Pl.'s Ex. CC. In plaintiff's view, the email suggests that defendant's investigation of plaintiff's claim was a sham that was undertaken for the sole purpose of finding a basis for denying the claim. Although the email does show that the employee was predisposed to deny any claim for coverage for stays at PTSD Unit, the employee clearly states her intention to rely on the language of the certificate of insurance, rather than on some "frivolous or unfounded refusal to pay." Terletsky, 649 A.2d at 688. The email thus is not evidence that defendant recklessly disregarded its lack of a reasonable basis, but instead shows that defendant understood its obligation to ground any denial of a claim in the language of the certificate of insurance.

Accordingly, the court finds that plaintiff's

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the position that under the terms of the Certificate of Insurance, merely having a nurse on call 24 hours a day somewhere in the building did not constitute 24 hour nursing coverage. Accordingly, defendant's failure to include Book's letter in the materials that it sent to the Department of Insurance does not reflect a conscious disregard of a lack of a reasonable basis for defendant's denial of plaintiff's claim.

allegations of bad faith do not constitute clear and convincing evidence upon which a reasonable jury could determine that defendant knew or recklessly disregarded its lack of a reasonable basis. For the reasons stated above, defendant's motion for summary judgment as to plaintiff's bad faith claim is granted.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.